

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DOUGLAS McPHERSON,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:15CV00009 HEA
	)	
MEGAN J. BRENNAN,	)	
Postmaster General,	)	
United States Postal Service,	)	
	)	
Defendants.	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendant’s Motion to Strike Plaintiff’s Jury Demand, [Doc. No. 33], filed on July 2, 2018. Plaintiff filed his Memorandum in Opposition to Defendant’s Motion to Strike Plaintiff’s Jury Demand, [Docket. No. 34], on July 17, 2018. For the reasons set forth below, Defendant’s Motion o Strike Plaintiff’s Jury Demand, [Doc. No. 33] is granted.

**Facts and Background**

Plaintiff brought this action pursuant to the Age Discrimination in Employment Act (“ADEA”) alleging that Defendant discriminated against him based on his age when she failed to hire him for the criminal investigator position that he sought. [Doc. 15]. In his Amended Complaint, Petitioner demanded a trial by jury. [Doc. 15].

## STANDARD OF REVIEW

Rule 39(a)(2) of the Federal Rules of Civil Procedure is clear in its mandate of considerations. When a trial by jury is demanded it is required unless “the court, on motion or on its own, finds that on some of all of those issues there is no federal right to a jury trial.” Fed. R. Civ. P. 39(a)(2)

## DISCUSSION

It is axiomatic the Seventh Amendment right to a jury trial does not apply to lawsuits against the federal government. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). “In an action involving federal funds, a plaintiff is only entitled to a jury trial if Congress has granted that right by statute.” *Gunter v. Farmers Ins. Co., Inc.*, 736 F.3d 768, 773 (8th Cir. 2013).

The ADEA does not set forth an express grant of a right to trial by jury. When the ADEA was amended to apply to the federal government, Congress did not grant, to federal employees, a right to a jury trial when they sue their federal employer (or potential employer) under that provision. *Lehman*, 453 U.S. at 169.

The Motion to strike is well taken. *See Logan v. Chertoff*, No. 4:07-C-1948-CAS, 2008 WL 922329, at \*3 (E.D. Mo. Apr. 2, 2008)(district court granted

federal defendant's motion to strike jury demand with respect to the claims brought pursuant to the ADEA); *see also* *Giles v. Equal Employment Opportunity Com'n*, 520 F. Supp. 1198, 1200 (E.D. Mo. 1981).

### **Conclusion**

The Court has considered the filings and arguments presented. Based upon the foregoing considerations Defendant's Motion to Strike Plaintiff's Jury Demand, [Doc. No. 33] is granted.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant's Motion to Strike Plaintiff's Jury Demand, [Doc. No. 33] is **granted**.

Dated this 4<sup>th</sup> day of October, 2018.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in black ink. The signature is positioned above a horizontal line.

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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE